Petition

81-585

Office-Supreme Court, U.S.
FILED
SEP 21 1981
ALEXANDER L. STEVAS,
CLERK

NO. _____

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1981

MARY McCRAINE — Respondent

VERSUS

HONDO BOATS, INC. — Petitioner
ANCHOR MARINE, INC.
ROBERT S. RICHARDSON

ON WRIT OF CERTIORARI
TO THE SUPREME COURT,
STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the history of, and justification for, admiralty jurisdiction and the consequent application of a special body of law to claims that fall within that jurisdiction militate in favor of or against extending admiralty jurisdiction to an accident involving a pleasure boat on a navigable waterway? Should the state and federal courts properly consider a suit arising out of an accident involving a pleasure boat within the admiralty jurisdiction for any other reasons?

2. In the context of a lawsuit for personal injuries, must there be a sufficient relationship of the alleged wrong to traditional maritime activity in order to confer admiralty jurisdiction and to apply the maritime law doctrine of laches to the suit, or is the alleged fact that an injury occurred on a navigable waterway in a pleasure boat sufficient to support that jurisdiction and render applicable that

maritime law?

3. Assuming such a sufficient relationship to traditional maritime activity is required, do the alleged facts that a defendant designed and manufactured a pleasure boat in a manner that failed to protect a passenger in the pleasure boat from the danger of coming into contact with an exposed engine supply the requisite relationship to traditional maritime activity?

4. If an extension of admiralty jurisdiction to accidents involving pleasure boats is warranted, should the scope of the extension be limited to lawsuits alleging factual situations where dangers or obstacles to maritime commerce or navigation were also present or generated, or where maritime "rules of the road" were involved and there was, therefore, a sufficient relationship to traditional maritime activity?

5. Should all lawsuits basically

alleging negligence in the construction and design of a pleasure boat fall within the admiralty jurisdiction?

6. Does the solitary alleged fact that negligence in construction and design of a pleasure boat created a dangerous condition on that boat and caused an injury to a passenger on that boat, bring a suit within the admiralty jurisdiction? Should it instead be a prerequisite that the alleged condition threatened the pleasure boat itself or the ability to navigate that boat, or otherwise created a danger to maritime commerce or navigation, and that the facts thereby indicate a sufficient relationship of the harm to traditional maritime activity?

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OPINIONS DELIVERED BELOW

The May 18, 1981 opinion of the Louisiana Supreme Court appears at 399 So. 2d 163 and is reprinted as Appendix B herein. The October 6, 1980 opinion of the First Circuit Court of Appeal of Louisiana appears at 392 So. 2d 161 and is reprinted as Appendix D herein. The February 5, 1980 judgment and opinion of the District Court is not reported and is reprinted below as Appendix F.

GROUNDS FOR JURISDICTION

Petitioner seeks review of an opinion rendered by the Louisiana Supreme Court on May 18, 1981. The Louisiana Supreme Court denied your petitioner's application for a rehearing of the case on June 22, 1981. Petitioner has filed this petition for a writ of certiorari to review the Louisiana Supreme Court opinion within ninety days of the day following the Louisiana Supreme Court denial of its application for rehearing.

Jurisdiction of this court is invoked under the authority of 28 USC 1257(3) which statute authorizes United States Supreme Court review by writ of certiorari of a final judgment of the highest court of a state in which a decision could be had.

STATUTE CASE INVOLVES

> "The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled..."

28 United States Code 1333

STATEMENT OF THE CASE

Plaintiff, Mary McCraine, filed a lawsuit on August 2, 1979 against your petitioner, Hondo Boats, Inc., and also named as defendants, Anchor Marine, Inc. and Robert S. Richardson. In an original and supplemental petition, Ms. McCraine alleged that on May 21, 1978, she was injured while riding as a passenger in a

boat manufactured by Hondo Boats, Inc., retailed by Anchor Marine, Inc. and operated at the time of the accident by its owner, Robert S. Richardson. Ms. McCraine alleges that she was seated on a bench facing the rear of the boat when the boat, in the process of acceleration, struck the wake of another vessel, causing her to be thrown to the deck of the boat and to come into contact with the engine of the boat. According to plaintiff, her contact with the engine resulted in burns to several portions of her body.

Plaintiff McCraine alleges basically that your petitioner, Hondo Boats, Inc. was negligent in designing and manufacturing the boat in a manner that failed to protect her from the danger of coming into contact with an exposed engine. She further alleges that Anchor Marine, Inc. was negligent in selling a boat it knew or should have known was defective and dangerous. Finally, Robert S. Richardson

is named as a defendant for his alleged negligence in owning and maintaining a dangerous instrumentality (the boat) and in failing to provide a safety device or protective enclosure for the exposed engine on the boat.

Plaintiff does not allege that her injuries were caused by any violation of maritime navigation rules or by the negligence of the driver of the pleasure boat in the actual manner of operation of that boat. She does not contend that the injury to her presented a hazard to the pleasure boat itself or otherwise endangered the safe passage of vessels in the navigable waterway. Plaintiff alleges no relationship to the harm to commercial maritime activity or that she is a member of a class of persons (e.g. seamen or longshoremen) maritime law is designed to protect.

Ms. McCraine filed her suit for injuries in State Court in Louisiana. At

the outset of her petition for damages, Ms. McCraine asserts that her claim is within the admiralty and maritime jurisdiction of the United States and was filed in State Court under the authority of the "Savings To Suitors" Clause. The parties to this lawsuit do not contest the fact that the boat in which Ms. McCraine was riding was a pleasure boat that was not used for commercial purposes and that the accident occurred on navigable waters in Louisiana.

Your petitioner, Hondo Boats, Inc., filed an Exception of Prescription to plaintiff's lawsuit, contending that the suit was barred by Louisiana's one year statute of limitations since plaintiff had not filed her claim within one year of the date of the accident. Plaintiff McCraine took the position that the Louisiana state statute of limitations was not applicable to her claim as her claim was within the admiralty and mari-

time jurisdiction of the United States and was governed by the maritime law doctrine of laches. Under the maritime doctrine of laches, a claim is not defeated by the defense that a time period in which plaintiff's lawsuit may be brought has passed, but rather the inquiry is whether there was a justification for any delay in bringing the suit and whether defendants were prejudiced by this delay. Therefore, the continued viability of plaintiff's claim is dependant upon a determination of the law to be applied to the facts of her case, the state statute setting out a one year prescriptive period or the maritime doctrine of laches.

The state lower Court Judge ruled that plaintiff's suit was not within the admiralty jurisdiction and that the maritime doctrine of laches consequently did not apply to her claim. The judge dismissed plaintiff's suit since under

state law her suit had prescribed. Plaintiff McCraine appealed her case to the First Circuit Court of Appeals of the State of Louisiana. That Court affirmed the lower Court ruling that plaintiff's claim was not within the admiralty and maritime jurisdiction of the United States and that the maritime doctrine of laches did not apply to a suit filed in state court absent the existance of admiralty and maritime jurisdiction. The majority of the Louisiana Supreme Court reversed both lower court rulings and determined that plaintiff's claim was within admiralty jurisdiction and that the substantive law of admiralty, including the doctrine of laches, was applicable to her claim. The State Supreme Court thus ruled that the state law establishing a time limitation within which a plaintiff must file a lawsuit was not applicable to plaintiff McCraine's suit, and that her suit should not have been

dismissed on that basis. The State Supreme Court remanded plaintiff's case to the District Court for further proceedings consistent with the views expressed in its opinion. Justice Blanche of the State Supreme Court dissented, with written reasons, from the majority opinion of that Court, expressing his view that the facts alleged in plaintiff's claim did not set forth a sufficient relationship to traditional maritime activities and, as a result, there was no basis for admiralty jurisdiction and the application of admiralty law. For the reasons discussed below, your petitioner herein, Hondo Boats, Inc., contends that the Louisiana State Supreme Court was in error when it ruled that plaintiff's claim falls within the admiralty jurisdiction of the United States and reversed the lower state court judgments which resulted from an application of state law to plaintiff's claim.

ARGUMENT AND REASONS FOR ALLOWANCE OF THE WRIT

In accordance with interpretations of the "Savings To Suitors" clause of 28 USC 1333, a claim within the admiralty and maritime jurisdiction of the United States need not exclusively be filed in federal court in order for admiralty and maritime law to apply. Rather, the claimant has the option of filing in federal or state court and does not forego the application of admiralty law to his claim by filing suit in state court, provided there is a basis for admiralty and maritime jurisdiction over his claim. Plaintiff in the instant suit, Mary McCraine, asserts that she has a right to file her suit in state court under the "Savings To Suitors" clause and to have the maritime doctrine of laches apply to her suit. The Louisiana State Supreme Court has adopted Ms. McCraine's position and, in doing so, has overturned the decisions of

two lower state courts. Petitioner strongly urges that the Louisiana Supreme Court has erred in its determination that Ms. McCraine has a right to bring her claim in state court under the "Savings To Suitors" clause and to have a doctrine peculiar to admiralty and maritime law apply to the facts of her case. In so ruling, the highest Court of the State of Louisiana, has, your petitioner contends, erroneously extended the limits of admiralty and maritime jurisdiction far beyond the proper scope of that jurisdiction as defined by this Court, and by the vast majority of lower federal and state courts and noteworthy commentators on the subject.

Hondo Boats, Inc. petitions this Court as a court of last resort to issue a writ of certiorari in order to correct what will otherwise, in the absence of review by this Court, stand as the definitive law in the state of Louisiana on the

scope of admiralty and maritime jurisdiction. Although review of this state Supreme Court decision on a writ of certiorari is not a matter of right of petitioner, the state court decision below is characteristic of the type of state court ruling which this court has indicated in Rule 17 of the Rules of the Supreme Court of the United States that is particularly suited for review by writ of certiorari. Rule 17 sets out the following as a particular consideration of the court in determining whether to exercise its discretion in reviewing a decision of a state court by writ of certiorari:

> ".1(c) When a state court has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

The Louisiana State Supreme Court has decided a federal question of substance not heretofore determined by the United

States Supreme Court, i.e. the extent of admiralty and maritime jurisdiction in cases involving pleasure boats. In the view of petitioner, and as discussed below, the state Supreme Court has decided this federal question of substance in a manner that is not in accordance with quidelines for the determination of the scope of admiralty and maritime jurisdiction set out by this Court in the case of Executive Jet Aviation, Inc. v. City of Cleveland, Ohio, 409 US 249, 34 L. Ed. 2d 454, 93 Ct. 493, (1972).

Petitioner further urges the Court to grant this writ in order to settle a conflict among the lower courts as to whether accidents involving pleasure boats are "in admiralty". If the Court determines that the facts alleged in some pleasure boat accidents may be "in admiralty", it would then become important to reaffirm or establish guidelines for use by the lower courts in deciding

the scope of admiralty jurisdiction over pleasure boat accidents. Application of appropriately formulated guidelines should exclude cases such as the instant one from admiralty jurisdiction since inclusion of this case "in admiralty" is a revival of the "locality rule" previously abrogated by this court in Executive Jet, supra.

HISTORY AND JUSTIFICATION FOR ADMIRALTY JURISDICTION

It is important to consider the history and justification for admiralty and maritime jurisdiction (and the consequent application of a special body of law to claims that fall within that jurisdiction), in order to understand the proper scope of the admiralty and maritime jurisdiction.

> "The admiralty jurisdiction in England and in this country was born of a felt need to protect the domestic shipping industry in its competition with foreign shipping, and to provide a uniform body of

> law for the governance of domestic and foreign shipping, engaged in the movement of commercial vessels from state to state and to and from foreign states."

Crosson v. Vance, 484 2d 840 (4th Cir. 1973), at page 840.

> "The admiralty jurisdiction of the federal courts derived from the conviction of the members of the Constitutional Convention that there was a need for a uniform body of laws, in general harmony with the laws of other maritime nations, for the conduct of the shipping business. Thirteen separate bodies of law were thought quite unacceptable for the governance of international trade. Regulation of the shipping industry was close to the conduct of foreign affairs, and those engaged in the industry were thought to have a need of predictability for the rights and liabilities." (footnote omitted)

Richards v. Blake Builders Supply, Inc. 528 F. 2d 745 (4th Cir. 1975), at page 747. Therefore, the impetus for admiralty jurisdiction was to provide uniform pro-

tection and control of maritime commerce in the United States.

> "The only valid criterion of the admiralty jurisdiction is the relation of the matter - whether it be tortious or contractual in nature - to maritime commerce... location is often irrelevant. What is relavant and does justify the continued existence of separate maritime laws and procedures are the practical realities of the situation and the overriding goal of perpetuating the vitally important maritime industry. The maritime industry is still, to a large extent, transcent, far - flung, and fraught with perils. Those dealing with that industry - whether furnishing supplies, services, or shipping goods - are, consequently, entitled to remedies and defenses peculiarily fitted to such ventures and should not be subjected to the idiosyncrasies of each port's local law. Similarily, because of the perils of the industry, those employed to man and operate vessels who are injured as a result thereof are entitled to special uniform laws specially designed to cover such occurrences. Such laws, not only assure the availability of a reasonably fair remedy to those connected or dealing

> with the maritime industry no matter where the injury or dispute may arise, but also give to all concerned - merchant, seaman and vessel owner - the ability to know in advance of the undertaking of the rights and liabilities that will apply should some breach or disaster occur."

7 A J. Moore, Federal Practice, Admiralty Paragraph. 325 (5) pp. 3606 to 3607 (2d edition 1976).

CONSEQUENCES OF A DETERMINATION OF ADMIRALTY JURISDICTION

As this Court emphasized in Executive Jet, supra, a determination that a case is within the admiralty jurisdiction not only confers the jurisdiction of the federal courts over the case, but also results in the application of the "full panoply of the substantive admiralty law as well." This consequence of admiralty jurisdiction is of particular significance in the instant case since, should the Louisiana state law on prescription govern the facts of the case, rather than

the maritime doctrine of laches, plaintiff's suit must be dismissed as untimely. The refusal by the state Supreme Court to apply state law to the facts of this case illustrates a very serious "cost" of determining that a suit is within the admiralty jurisdiction of the United States. The state Supreme Court has refused to apply to a claim arising from an accident occurring within this state, a law which expresses a sound and important policy of the State of Louisiana in establishing a time limitation within which a plaintiff must assert a claim in Court. There is an obvious and substantial harm to the doctrine of comity when a state's ability to govern activities within its borders is so limited. The considerable costs of maintaining admiralty jurisdiction in this case are not outweighed by any need or justification for the maintenance of that jurisdiction.

A determination that Mary McCraine's claim is within the admiralty jurisdiction, and that maritime law is applicable to that claim, in no way promotes or protects maritime commerce. Ms. McCraine is not a seaman or a person otherwise engaged in maritime commerce for whom maritime laws are created and especially designed to protect. Neither she nor the vessel in which she was a passenger at the time of her alleged injury were engaged in any commercial activity whatsoever. Ms. McCraine makes no allegation that her injury or the cause of her injury created a threat to others engaged in maritime commercial activities. The maritime law that will be applied to this case as a result of the state Supreme Court decision is designed to protect interests wholly different of those of Mary McCraine, and the application of this law is erroneous, unjustified and unwarranted by

the facts of this case.

THE EXECUTIVE JET TEST FOR ADMIRALTY JURISDICTION

In the landmark case of Executive Jet, supra, this court re-examined the proper scope of admiralty jurisdiction and established a test which would exclude from that jurisdiction claims that were related to maritime commercial concerns and which simply arose out of activities occurring on navigable waters. The Court rejected the "locality test" previously adhered to in The Plymouth, 3 Wall. 20, 35, 36, 18 Ed. 125 (1866), attacking the logic of the rule and citing examples of injustices which resulted from application of the rule. According to the locality rule, all claims arising out of torts which occurred on navigable waters of the United States fell within the admiralty jurisdiction. The Executive Jet court discussed lower court cases which had required not only

that a case involved injury upon navigable waters, but also that the tort have a significant relationship to maritime commerce and navigation, before admiralty jurisdiction would be maintained. The court concluded, in apparent approval, that

> "In sum, there has existed over the years a judicial legislative, and scholarly recognition that, in determining whether there is admiralty jurisdiction over a particular tort or class of tort, reliance on the relationship of the wrong to traditional maritime activity is often more sensible and more consonant with the purposes of maritime law than is purely mechanical application of the locality test."

Executive Jet, supra, 409 U.S. 261, 262. Although the specific holding of the court was that maritime locality alone is not a sufficient predicate for admiralty jurisdiction in aviation tort cases, and that in addition, the wrong must bear a significant relationship to traditional maritime activity, the considerations

which led to the adoption of the test, and broad language used by the court in Executive Jet, indicate that this test should be applied to all maritime torts in determing whether there is admiralty jurisdiction over these tort claims.

The court apparently approved of widespread use of a "maritime nexus" test by the lower courts and cited cases involving factual situations other than aviation torts where the test was applied. Since the advent of Executive Jet, courts and commentators have consistently taken the position that the Executive Jet test, is to be applied as the proper test for all maritime torts, not only aviation torts. Hondo Boats, Inc. contends that the "maritime nexus" test is a logical and just one and should be applied to the facts of the instant case.

As the Fifth Circuit noted in Sohyde Drilling and Marine Co. v. Coastal States Gas Producing Co., 644 F. 2d 1132

(Fifth Circuit, 1981), Executive Jet set out the "maritime activity nexus test" in a general maritime tort action. Sohyde stands for the proposition that this test is likewise applicable to cases brought under the "Admiralty Extension Act", which Act purports to confer admiralty jurisdiction over all cases of injury caused by a vessel on navigable water. For reasons discussed at length in Sohyde, any contention by plaintiff that her claim is brought under authority of the Admiralty Extension Act will not automatically support admiralty jurisdiction, and her action must pass the "maritime nexus" test.

The district court, Court of Appeals, and the Louisiana State Supreme Court all held that a relationship between the tort and traditional maritime activity was required to support admiralty jurisdiction. Both lower courts found the facts did not establish the requisite

relationship.

Your petitioner contends that the State Supreme Court was in error in reversing the lower courts and in reaching its conclusion that the facts did support admiralty jurisdiction.

SHOULD PLEASURE BOAT ACCIDENTS FALL WITHIN THE ADMIRALTY JURISDICTION?

Commentators on the subject have leveled forceful attacks on the extension of admiralty jurisdiction to claims arising out of the operation of pleasure boats. Professor Black appropriately argues that a claim for injury should fall within the admiralty jurisdiction only when the facts of the case indicate a "real and substantial relation to shipping". Black, Admiralty Jurisdiction: Critique and Suggestions, 50 Col. L. Rev. 259 262, (1950). Professor Stolz points out that the operation of a small pleasure craft is an activity that is local in nature and the application of a uniform

body of laws to claims resulting from such an activity may be detrimental. Stolz, Pleasure Boating and Admiralty: Erie at Sea, 51 Cal. L. Rev. 661. As discussed below, several federal courts take the position that claims involving pleasure boat accidents do not fall within admiralty jurisdiction.

The argument against including claims arising out of pleasure boat accidents within the admiralty jurisdiction is reinforced by recognition that ownership and use of small pleasure craft has increased tremendously. Maintenance of admiralty jurisdiction over accidents involving pleasure boats would greatly expand that jurisdiction. In Executive Jet, supra, this court reiterated its approach in determing the limits of admiralty jurisdiction. "Just last Term in Victory Carriers, Inc. v. Law, 404 US at 212, 92 S. Ct., at 425, we observed that in determining whether

to expand admiralty jurisdiction 'we should proceed with caution...' Quoting from Healy v. Ratta, 292 U.S. 263, 270, 54 S. Ct. 700, 703, 78 L. Ed. 1248 (1934), we stated:

> '"The power reserved to the states under the Constitution, to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judiciary sections of the Constitution... Due regard for the rightful independence of state governments, which should actuate federal courts, require that they scrupulously confine their own jurisdiction to the precise limits which (a Federal) statute has defined,"'"

The state Supreme Court finding of admiralty jurisdiction over a claim arising from a pleasure boat accident in the instant case violates this Court's mandate to proceed with caution in the extension of admiralty jurisdiction, especially considering the particular facts of this case. Unlike accidents in certain factual situations where pleasure

boats are involved, in the instant case there was absolutely no injury or threatened injury, or any other relationship to maritime commerce or navigation and consequently no federal interest mandating the extension of admiralty jurisdiction.

A further reason for allowing local law to govern most pleasure boat accidents is the nature of admiralty law. Since admiralty law was developed to promote maritime commerce and industry and for the protection of persons engaged in this endeavor, application of admiralty rules of law to pleasure boat accidents may not only be inappropriate and unwieldy in some instances, but can further result in injustice. For instance, the court in Armour v. Gradler, 448 F. Supp. 741 (W.D. Penn. 1978), spoke of the injustice which would result should the Limitation of Liability Act be applied to a pleasure boat accident.

That law allows the owner of a vessel to limit his liability to the value of his vessel. The Armour court recognized that the statutory purpose of the rule (to encourage ship building and the employment of ships in commerce) would not be served by applying the rule to a pleasure boat owner, and also, that application of the rule would be unjust to claimants, considering the relatively low value of pleasure boats.

CONFLICTING PRECEDENTS AND THEIR APPLICATION TO THE INSTANT FACTS

There is a conflict among the lower courts on the issue of whether an alleged tort resulting from an accident involving a pleasure boat bears a sufficient relationship to traditional maritime activity such that the claim is cognizable "in admiralty". Courts determined that there was no admiralty jurisdiction in several cases involving water skiing accidents. Jorsch v. Lebeau 449 F. Supp. 485

(N.D. Ill. 1978), Webster v. Roberts 417 F. Supp. 346 (E.D. Tenn. 1976), Crosson v. Vance 484 F. Supp. 840 (4th Cir. 1973). The case of Roberts v. Grammer 432 F. Supp. 16, (E.D. Tenn 1977) involved a collision between two pleasure boats. The Court in that case emphasized that the law of admiralty was especially designed for the shipping industry and not for small pleasure boats. The Court ruled that in order to successfully invoke the admiralty jurisdiction, there must be some connection to the shipping industry in the facts of the case, and found no such connection where there was a collision between pleasure boats on a small landlocked lake. The Court further noted that the laws of the States provide adequate remedies and procedures for the settlement of such disputes. In Bendlin v. Virginia Electric and Power Company, 449, F. Supp. 934, IE.D. NC 1978), the Court also held that there was no

admiralty jurisdiction in a case involving a pleasure boat accident. In that case plaintiff has sustained injuries when he sailed a boat into electric power lines. The Court held that traditional concepts of the role of admiralty law did not encompass a claim where the alleged negligence was the omission on the part of the owner of the boat to warn the guests of the existence of possible navigational hazards.

There may be verly limited situations where a pleasure boat is involved in an accident and a claim arising out of that accident does properly fall within the scope of the admiralty jurisdiction. The extension of admiralty jurisdiction in cases of this sort should be carefully restricted to cases where there truly is a sufficient relationship to traditional maritime activity. It is particularly important to require a stringent application of the "maritime activity nexus"

test to cases arising out of pleasure boat accidents since, unlike claims arising out of accidents involving commercial maritime activity, the mere fact that a tort arose out of a pleasure boat accident does not, in itself, supply the requisite relationship to traditional maritime activities involving navigation or commerce on navigable waters.

Some cases have held that maritime jurisdiction is appropriate in cases involving pleasure boats since, under the facts of the cases, there was a sufficient relationship to traditional maritime activity. Even assuming that the courts in these pleasure boat cases correctly applied the "maritime nexus" test, each case maintaining admiralty jurisdiction can be distinguished from the instant one. In Armour v. Gradler, 448 F. Supp. 741, (W.D. Penn. 1978), the court determined that there was admiralty

jurisdiction where an individual drowned after the 30 foot pleasure boat he occupied had sunk. The hull of the vessel had been split and there was no indication what obstacle the vessel had encountered. Although the Court in that case did not discuss a relationship of the injury to traditional maritime activity, it is at least arguable that where a drowning ensues from the sinking of a boat, there is a relation to traditional maritime activity. The sinking of a boat may present a danger to maritime commerce, and perhaps it would be appropriate to apply a uniform body of law to cases involving such a traditional maritime danger.

Likewise, there was justification for determing that admiralty jurisdiction existed in the case of Kayfetz v. Walker 404 F. Supp. 75, 1975. The case involved a collision between two pleasure boats and a claim had been made

that the accident was caused by a disregard for the proper rules of navigation. The Court noted that although only pleasure craft were involved in the collision, and that these pleasure craft were involved in a sporting event (a sailboat race), rather than commercial activity, these factors which might indicate admiralty jurisdiction was not appropriate were outweighed by the fact that the cause of the harm was alleged to be violation of navigational rules. The Court emphasized that all parties involved were actively engaged in the navigation of a vessel and that there was no non-navigational vehicle or instrumentality involved. The Court in Gilmore v. Witschorek 411 F. Supp. 491, 1976 also found admiralty jurisdiction in a case involving the collision of two pleasure boats. The Court similarily based its decision on the fact that injuries allegedly resulted from a

disregard of the rules for proper navigation. The Fifth Circuit reached the same result for the same reasons in a factually identical case, emphasizing that, regardless of their intended size, purpose and activity, all boats traversing navigable waters are governed by the same navigational "Rules of the Road". Richardson v. Foremost Insurance Co. 641 F. 2d 314 (Fifth Circuit 1981). There is a pending appeal of the Richardson case before this Court at this time. The need for uniform navigation rules is apparent and the extension of admiralty jurisdiction to claims alleging violation of these rules, even in instances where only pleasure boats are involved is appropriate. The nexus to traditional maritime activity is apparent where violation of navigational rules is at issue.

Several cases have upheld admiralty jurisdiction where pleasure boats encoun-

tered certain navigational hazards. A skier pulled by a pleasure boat crashed into the submerged edge of a barge in Kaiser v. Travelers Insurance Company, 359 F. Supp. 90, (E.D.LA. 1973), a pleasure boat struck an unlit flare pipe in Gele v. Chevron Oil Company 574 F. 2d 243 (Fifth Circuit 1978), and a pleasure boat incurred damage when it encountered an oil slick in Oppen v. Aetna Insurance Company, 485 F. 2d 252, (Ninth Circuit 1973). Such obstacles are common to all vessels, both pleasure and commercial craft, and admiralty jurisdiction may be justified since, as the Court noted in Oppen, supra, the harm encountered bore a significant relaticnship to the traditional maritime activity of navigation. The Court in St. Hilaire Moye v. Henderson, 496 F. 2d 973,(8th Cir. 1974) found a sufficient maritime connection in a case where an individual was thrown into the water and injured after the

driver of the pleasure boat placed the boat in reverse gear while traveling forward at 25 miles per hour. The Court emphasized the federal interest in protecting navigation and commerce on navigable waters and in enforcing navigation rules on those waters. The Court pointed out that even if the pleasure craft was not directly engaged in commerce itself, a violation of navigation rules by its operator could present a potential danger to operators of other vessels which are in commerce.

If this decision is justifiable at all, it should be on this basis. The following statement made by the court at page 979 should be disregarded as a poorly disguised and unauthorized reinstatement of the locality rule: "... The operation of a boat on navigable waters, no matter what its size or activity, is a traditional maritime activity to which the admiralty juris-

diction of the federal courts may extend."

In each of the above cases, there was at least some justification for extending admiralty jurisdiction to cases where non-commercial pleasure boats were involved. In each of these cases there was at least one fact which connected the harm to traditional maritime activity. The claimants alleged factual situations where dangers or obstacles to maritime commerce or navigation were present or generated, or where maritime navigation "rules of the road" were involved and there was, therefore, a sufficient relationship to traditional maritime activity. Hondo Boats, Inc. asserts that if an extension of admiralty jurisdiction to accidents involving pleasure boats is warranted, the extension should be limited to situations such as the above where there is at least an arguable connection to

traditional maritime activity.

The Fifth Circuit case of Kelly v. Smith, 485 F. 2d 520, 1973, set out four (4) factors to be considered in determining whether a case fell within the admiralty jurisdiction. The Court discerned these factors from its reading of Executive Jet, supra, and the Fifth Circuit case of Peytavin v. Government Employees Insurance Company 453 F. 2d, 1121 (1972). In Kelly, the operator of the 15 foot outboard motor boat was injured by gunfire initiated from the shore as he operated his motor boat down the Mississippi River. The Court applied its four factor test to the facts as follows. 1. Functions and Roles of the Parties. The person most seriously injured was the pilot, the person responsible for safe navigation of the river. 2. The Types of Vehicles and Instrumentalities Involved. 3. The Causation and Type of Injury. 4.

Traditional Concepts of the Role of Admiralty Law. The vehicle involved was a boat and the other instrumentality involved, firearms, and the injuries they caused did not preclude a maritime connection.

The court in Montgomery v. Harold 473 F. Supp. 61 (E.D. Mich. 1979) applied the Kelly test to a factual situation similar to that of the instant case. Plaintiff in Montgomery filed suit against a pleasure boat owner for damages as a result of her husband's death while aboard the boat, allegedly due to asphyxiation from lethal fumes on the boat. The court found that (1) the parties to the suit were apparently only social friends and the craft was used for recreation purposes; (2) the craft had not left the dock, and the instrumentality of the injury, lethal fumes, is not unique to boats; (3) the type of injury, death, is not unique to the sea

nor is its source. (The court emphasized that it would be different if the death was by drowning or shipwreck or some other uniquely maritime cause.) (4).

> "As to the traditional concepts of admiralty, I cannot see how they apply here. There was no navigation or trade involved. The vessel was purely a pleasure craft; it did not leave the dock. The fact that plaintiff's decedent was killed on the water was purely fortuitous. None of the needs that generate the law of admiralty's special rules of procedure and substance would be served by their application to this case. Thus, I hold plaintiff has not alleged a maritime cause of action."

An application of the Kelly factors to the facts of the instant case should result in the same conclusion as in Montgomery. The party injured in this case was a social friend and passenger on a pleasure boat used for recreation. She apparently played no role in the navigation of that boat. Although Ms. McCraine was riding in a

boat at the time of the accident, and the instrumentality which caused her injury was the power source of that boat, the type of injury is in no way peculiar to traditional maritime activity, and the fact that the instrumentality which allegedly caused the harm was on a boat should not be conclusive, or even necessarily indicative, of admiralty jurisdiction. Finally, your petitioner contends that it would not be in keeping with the traditional concepts of the role of admiralty law and in no way promote or protect maritime commerce and navigation to hold that simply because an individual is injured by an instrumentality located upon a boat at the time of injury, a claim arising out of that injury is within the admiralty jurisdiction.

In its reversal of the lower courts, the Louisiana State Supreme Court specifically found a substantial connection

with traditional maritime activity in that plaintiff alleged that her injuries were caused by the negligence of the manufacturer in the design of the vessel and by the negligence of the distributor in selling and the owner in maintaining a vessel which was unreasonably dangerous in normal use. The Court concluded that "certainly, the issue of whether a vessel was or was not properly designed and properly manufactured for safe use upon navigable waters has a substantial connection with traditional maritime activity." The Court cited Jig the Third Corporation v. Puritan Marine Insurance Underwriters Corporation 519 F. 2d 171, (5th Cir., 1975) cert denied 424 U.S. 954,(1976), for the proposition that even though the conduct complained of was negligence in construction or defective design which occurred ashore, the tort was nevertheless maritime in nature.

In Jig the Third Corporation, supra, the Fifth Circuit held that "when an ocean-going shrimpboat sinks in 15 fathoms of water in the Gulf of Mexico and the sinking is allegedly tortious, there is maritime locality plus a significant relationship to traditional maritime activity, and the tort, recognized by the law, is maritime in nature." page 174. Even assuming that a product liability claim such as the one asserted in the instant case and in Jig the Third Corporation, supra, is a proper claim "in admiralty", the facts of the instant case, unlike those of Jig the Third Corporation, do not establish a sufficient connection between the tort and traditional maritime activity. Hondo Boats, Inc. contends that the Louisiana Supreme Court failed to focus on the proper inquiry in determining admiralty jurisdiction since it did not require a connection between the wrong or tort and

traditional maritime activity as is required by Executive Jet. In Jig the Third Corporation, supra, the wrong or tort was the sinking of a vessel. As discussed above, the sinking of a vessel is a harm substantially related to traditional maritime activity. See also Pan-Alaska Fisheries, Inc. v. Marine Construction and Design Co., 565 F. 2d 1129 (9th Cir. 1977).

Likewise, admiralty jurisdiction can be justified where suit is brought against a manufacturer of a commercial vessel for damages as a result of the alleged negligent design and manufacture of that vessel. See, e. g. In re: Oil Spill by "Amoco Cadiz" Off Coastal France, 491 F. Supp. 170 (N.D. Ill. 1979) where a commerical vessel was engaged in commerce when it was involved in a maritime accident allegedly caused by the negligent design and manufacturer of the vessel.

On the other hand, a burn injury from an instrumentality aboard a pleasure boat does not, in and of itself, bear a substantial relationship to traditional maritime activities.

CONCLUSION

Again, the plaintiff is not a member of a class of people, such as seamen, traditionally protected by admiralty law, and whose protection was the impetus for much of the admiralty law. The boat in which she was riding was not engaged in commercial activity and, consequently, there are no commercial maritime interests to protect. Mary McCraine was not injured due to a violation of navigational rules or due to obstructions encountered in navigable waters. Her injury did not result from, or create, a danger to maritime commerce or otherwise affect traditional maritime activity. The rationale of Executive Jet requires such a relationship of the

harm to traditional maritime activity in order to support admiralty jurisdiction.

Ms. McCraine's claim against Hondo Boats, Inc. is simply a products liability claim and state procedural and substantive rules should apply to her claim. A special body of law, products liability law, has developed in the state of Louisiana and other states specifically for such claims as Ms. McCraine's. It is arguable that where products liability claims allege a harm to a commercial vessel, or a harm that is otherwise particularly related to traditional maritime activity, admiralty jurisdiction is property and a uniform law should be applied. However, where the injury is not alleged to have resulted from a danger or obstacle to maritime commerce or navigation, or have created such a danger or obstacle, the law of the forum state is the only appropriate law to be applied.

There will be substantial and unjustified costs in comity and in the time of the federal courts if admiralty jurisdiction is not so limited. The holding of Louisiana Supreme Court under the facts of the instant case sets a dangerous precedent in a state where pleasure boating is popular and widespread. If this case is allowed to stand as a precedent in this jurisdiction, apparently all pleasure boat accidents, regardless of the facts, will be considered to be within the admiralty jurisdiction, at least by the courts of the State of Louisiana. Certainly, it will be difficult, if not impossible, to distinguish the facts of the instant case from those of any future case in which someone is injured while in a pleasure boat on navigable waters, by any sort of instrumentality which happens to be located on board the boat.

The following hypothetical factual

situation illustrates the potential reach of admiralty jurisdiction under the current status of Louisiana law. Should a water pipe beneath the wet bar of a yacht leak, depositing water on the floor, and should a passenger slip and fall in the water spot, a state court, bound by the decision in the instant case of the Louisiana Supreme Court will not be able to logically distinguish these facts from those of the instant case and find that there is no admiralty jurisdiction over a plaintiff's claim that the yacht manufacturer was negligent in its design and construction of the wet bar. Certainly, this type of a claim, and the type of claim leveled against Hondo Boats, Inc. in the instant case, is not the sort for which admiralty jurisdiction and admiralty law were created.

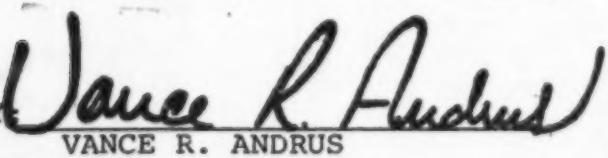
Your petitioner requests that this Court not allow bad law to stand merely

because of the "hard facts" of the instant case. Plaintiff's claim is one properly cognizable under state law and solely under state law. She has failed to file suit within the time limits mandated by state law, and her claim has prescribed. Allowing plaintiff's claim to be brought within the admiralty jurisdiction, would foster no federal interest, and, in fact, would be detrimental to that interest. Petitioner requests that this Court grant this writ of certiorari and settle the conflict among the courts over when admiralty jurisdiction is warranted and justified in cases arising out of pleasure boat accidents. The facts of the instant case present to the Court an opportunity to provide a fair and logical test which would include within that jurisdiction cases involving injuries which are related to the traditional concerns of maritime commerce, and exclude cases

where there is no true connection between the harm and traditional maritime activity.

Respectfully submitted,

ANDRUS & PREIS
(A Professional Law Corporation)

BY: 
VANCE R. ANDRUS
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Attorney for Defendant-
Petitioner

Appendix

THE SUPREME COURT OF THE
STATE OF LOUISIANA

MARY McCRAINE

VS NO. 80-C-2577

HONDO BOATS, INCORPORATED
AND ANCHOR MARINE,
INCORPORATED

In Re: Mary McCraine, applying for Certiorari, or writ of review, to the Court of Appeal, First Circuit, No. 13,629, Parish of East Baton Rouge.

December 5, 1980

Granted. (See order attached.)

JAD

PFC

JCW

HTL

Supreme Court of Louisiana
December 5, 1980

_____
Clerk of Court
For the Court

THE SUPREME COURT OF THE
STATE OF LOUISIANA

MARY McCRAINE

VS. NO. 80-C-2577

HONDO BOATS, INCORPORATED
AND ANCHOR MARINE,
INCORPORATED

In re Mary McCraine

applying for Writ of Review

No. 226,882 on the docket of the 19th Judicial District Court for the Parish of East Baton Rouge, and No. 13,629 on the docket of the Court of Appeal, First Circuit, State of Louisiana.

And, whereas, the Court has this date, pursuant to Article 5, Section 5, of the Constitution of Louisiana, made and issued the following order, to-wit --

"It is ordered that the writ of review issue; that the Court of Appeal send up the record in duplicate of the case; and that counsel for all parties be notified."

Now, therefore, the said Court of

Appeal is hereby commanded, in the name of the State of Louisiana and of this Honorable Court, to send up forthwith to this Court, at the City of New Orleans, the record in duplicate of the above entitled case.

Witness the Honorable Justices of the Supreme Court of the State of Louisiana, on this 5th day of December, in the year of Our Lord, One Thousand, Nine Hundred and Eighty.

Frans J. Labranche, Jr., Clerk of Court

APPENDIX B.

SUPREME COURT OF LOUISIANA

NO. 80-C-2577

MARY McCRAINE

V.

HONDO BOATS, INC. and
ANCHOR MARINE, INC.

ON WRIT OF REVIEW TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF EAST BATON
ROUGE, STATE OF LOUISIANA

MARCUS, Justice

Mary McCraine instituted this action on August 2, 1979, to recover damages for personal injuries sustained while a passenger in a pleasure boat. The claim was asserted to be within the admiralty and maritime jurisdiction of the United States and filed in the state court pursuant to the "saving to suitors" clause of U.S.C. § 1333. Named defendants were Hondo Boats, Inc., manufacturer of the boat, Anchor Marine, Inc., seller of the boat, and Robert S. Richardson, owner and operator of the boat on the day of the accident.

Plaintiff alleged in her petition that on May 21, 1978, she was a passenger in the boat traveling in the Amite River Division Canal, part of the intercoastal waterway and a navigable waterway of the United States. Plaintiff was seated facing the rear of the boat when it accelerated and struck the wake of another vessel causing plaintiff to be thrown to the deck and to slide against the exposed engine of the boat receiving serious burns. Plaintiff sought recovery against Hondo because its design of the boat made it unreasonably dangerous under normal use, Anchor Marine because it was negligent in selling a boat it knew or should have known was defective and dangerous in normal use, and Richardson because he was negligent in owning and maintaining a dangerous instrumentality.

Another Marine answered, generally denying the allegations of plaintiff's petition and affirmatively asserting the

negligence and/or assumption of risk of plaintiff as a bar to her recovery. It further asserted a third party demand against Hondo and Richardson. Hondo filed exceptions of improper citation and service of process and lack of jurisdiction. Hondo also filed an exception of prescription, asserting that since the alleged accident resulting in personal injuries to plaintiff occurred on May 21, 1978 but suit was not filed until August 2, 1979, the action had prescribed by the one-year prescriptive period (La. Civ. Code art. 3536) under state law. It denied that the present action arose under admiralty and maritime laws of the United States; therefore, the limitation period for filing suit was not controlled by the doctrine of laches. The other defendants joined with Hondo in its exception of prescription. The trial court overruled Hondo's exceptions of improper citation and service of process and lack of juris-

diction. However, finding that the cause of action was not properly within the admiralty and maritime jurisdiction, the trial court maintained the exception of prescription and dismissed plaintiff's suit as to all defendants. The third party demand of Anchor Marine against Hondo was likewise dismissed. Plaintiff appealed. The court of appeal affirmed.[1] On plaintiff's application, we granted certiorari to review the correctness of that decision.[2]

The sole issue presented for our determination is whether plaintiff's claim constitutes a maritime tort under the admiralty jurisdiction. If so, under the doctrine of laches, suit may be brought within any reasonable period that does not prejudice the defendants' ability to defend.[3] If the claim is not within the admiralty jurisdiction, the Louisiana prescriptive period of one year controls and plaintiff's suit would not

be timely.

The United States constitution provides that the judicial power of the United States extends to "all Cases of admiralty and maritime Jurisdiction." U.S. Const. art. III, § 2. This constitutional grant of federal jurisdiction is codified in 28 U.S.C § 1333 which provides in pertinent part:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled. (Emphasis added.)

Hence, in the instant case, plaintiff had the option to bring suit either in federal court pursuant to its admiralty jurisdiction or, under the saving to suitors clause, in the appropriate non-martime court, federal or state, by ordinary civil action. However, regardless of in which court the action is brought, the federal substantive admiralty or maritime law

(including the doctrine of laches) applies if the claim is one cognizable in admiralty. Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, 369 U.S. 355 (1962); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953); Garrett v. Moore-McCormack Company, 317 U.S. 239 (1942).

For many years, the standard for determining whether a tort was "maritime" and thus within the admiralty jurisdiction was that established in The Plymouth, 70 U.S. (3 Wall.) 20 (1866), which only required that, in order for maritime law to govern an action, the wrong must have occurred on navigable waters. This "strict locality test" was repeatedly applied by the courts;[4] however, by 1972, several lower federal courts had deviated from this test. The Sixth Circuit Court of Appeals required that, in addition to sustaining injury in a maritime location, the tort must have a "maritime connection." Chapman v. City of Grosse Pointe Farms,

385 F.2d 962 (6th Cir. 1967). The Fifth Circuit Court of Appeals considered that the facts and circumstances of each claim must have a "substantial connection with maritime activities or interests" in order to invoke the admiralty jurisdiction. Peytavin v. Government Employees Insurance Company, 453 F.2d 1121 (5th Cir. 1972).

The United States Supreme Court again addressed the requirements for admiralty jurisdiction in tort cases in Executive Jet Aviation, Inc. v. City of Cleveland, Ohio, 409 U.S. 249 (1972). In that case, plaintiff's airplane lost power while taking off from defendant's airport after ingesting seagulls into its engines and crashed and sank in Lake Erie, a navigable body of water. Plaintiff filed suit in federal court contending that there was admiralty jurisdiction under The Plymouth's locality rule. The Court concluded that the mere fact that the wrong occurred or was located on or over navigable waters

was not of itself sufficient to turn an airplane negligence case into a maritime tort. Rather, the Court found it "far more consistent with the history and purpose of admiralty to require also that the wrong bear a significant relationship to traditional maritime activity." Under the facts of Executive Jet, the Court found no such realtionship and thus no admiralty jurisdiction over aviation tort claims arising from flights of land-based aircraft between points within the continental United States.

The federal circuit courts of appeal have differed in their interpretations of the effect of Executive Jet upon admiralty jurisdiction in tort cases. The principal problem area has been defining what constitutes "traditional maritime acticity," especially in cases involving pleasure boats. In St. Hilaire Moye v. Henderson, 496 F.2d 973 (8th Cir.), cert. denied, 419 U.S. 884 (1974), the Eighth Circuit

suggested that a close reading of the Executive Jet decision might support an interpretation limiting its holding to situations involving aircraft. Indeed, in only a slight divergence from the "locality test," that court held that the operation of a boat on navigable waters, no matter what its size or activity, is a traditional maritime activity to which admiralty jurisdiction may extend. In Oppen v. Aetna Insurance Co., 485 F.2d 252 (9th Cir. 1973), the Ninth Circuit required that in addition to the locality test the wrong have "a significant relationship to traditional maritime activity." The Fourth Circuit in Crosson v. Vance, 484 F.2d 840 (4th Cir. 1973), concluded in an action for personal injuries brought by a water skier against the operator of a towing boat that it need not speculate whether the Supreme Court's opinion in Executive Jet Aviation would foreclose resort to admiralty in any case

involving the operation of small pleasure craft. The court stated that, in the case before it, it need only go so far as the Supreme Court's explicit direction to hold that admiralty jurisdiction did not reach a claim for personal injury by a water skier against the allegedly negligent operator of the towboat. However, in a later case, the Fourth Circuit, in a consolidated action to recover damages for injuries sustained by passengers on small pleasure crafts operated on navigable waters, concluded that since the pleasure boasts were vessels in navigation and the controversy arose out of their navigation, there was a "maritime connection" not present in Executive Jet Aviation. Therefore, the court concluded that the operation of the boats was within the admiralty jurisdiction and the new rule as stated in Executive Jet. Richards v. Blake Builders Supply Inc., 528 F.2d 745 (4th Cir. 1975). The Fifth Ciruit, in

Kelly v. Smith, 485 F.2d 520 (5th Cir. 1973), cert denied, 416 U.S. 969 (1974), considered that maritime locality alone was no longer sufficinet to sustain maritime jurisdiction and that the wrong must bear a significant relationship to maritime activity. In that case, feeing deer poachers aboard a 15-foot outboard motor boat were fired upon with hunting rifles by outraged defenders of a private hunting preserve ashore. Injuries were sustained by the persons aboard the boat. The issue was whether the tort claims of the plaintiffs, casualties aboard the boat, were within admiralty jurisdiction. The court concluded that while the facts that plaintiffs' injuries were consummated on navigable waters while in a boat weigh towards maritime jurisdiction, it must look to all the circumstances for a "substantial maritime relationship," including the functions and roles of the parties, types of vehicles and instrumentalities involved,

causation and the type of injury, and traditional concepts of the role of admiralty law. Applying this analysis to the facts of the case before it, the court concluded that the tort claims of the plaintiffs were within admiralty jurisdiction. In the recent case of Richardson v. Foremost Insurance Co., No. 79-2542 (5th Cir., Apr. 2, 1981), involving a collision between two pleasure boats in the upper reaches of the Amite River, the Fifth Circuit followed the reasoning in Kelly v. Smith, supra, and concluded that admiralty jurisdiction had been invoked.

Despite the uncertainty of the law in this area, it appears to us that the trend in the lower federal courts since Executive Jet is to require more than that the injury occurred on navigable waters while in a boat. While these facts weigh toward maritime jurisdiction, the courts must look to all the circumstances for a sustantial maritime relationship in order

to invoke admiralty jurisdiction. In the instant case, we have done so and conclude that plaintiff's tort claim is within the admiralty jurisdiction.

It is not disputed that plaintiff's injuries were sustained as a result of an accident occurring in navigable waters while aboard a moving boat. In addition, plaintiff's petition alleges that her injuries were caused by the negligence of the manufacturer in the design of the vessel and by the negligence of the distributor in selling and the owner in maintaining a vessel which was unreasonably dangerous in normal use. Certainly, the issue of whether a vessel was or was not properly designed and manufactured for safe use upon navigable waters has substantial connection with traditional maritime activity. Even though the conduct complained of may have been negligence in construction or defective design which occurred ashore, the tort is still maritime

in nature.[5] As recognized by the Supreme Court in Executive Jet, the law of admiralty "has evolved over many centuries, designed and molded to handle problems of vessels relegated to ply the waterways of the world." It cannot be argued that this special body of law is not particularly well-suited for determinations as to proper design and construction of vessels meant to operate on navigable waters. It is clear that the federal interest in protecting navigation and commerce on navigable waters extends to considerations of the safe design and construction of all vessels, including pleasure boats ued only for recreational, and no commercial, purposes. The potential danger to navigation and commerce posed by improperly designed and manufactured vessels is apparent.

Accordingly, we conclude that plaintiff's claim constitutes a maritime tort under the admiralty jurisdiction and the substantive law of admiralty, including

the doctrine of laches, controls. Thus, the court of appeal erred in affirming the ruling of the trial court maintaining defendants' exception of prescription.

DECREE

For the reasons assigned, the judgment of the court of appeal is reversed and the case is remanded to the district court for further proceedings in accordance with the views expressed herein.

FOOTNOTES

1. 392 So. 2d 161 (La. App. 1st Cir. 1980).

2. ___ So. 2d ____ (La. 1981).

3. Czaplicki v. "S.S. Hoegh Silvercloud," 351 U.S. 525 (1956).

4. See generally Victory Carriers v. Law, 404 U.S. 202 (1971) (footnote 2 of opinion contains an exhaustive list of citations).

5. See Jig The Third Corporation v. Puritan Marine Insurance Underwriters Corp., 519 F.2d 171 (5th Cir. 1975), cert. denied, 424 U.S. 954 (1976).

SUPREME COURT OF LOUISIANA

MARY McCRAINE

VERSUS NO. 80-C-2577

HONDO BOATS, INC. and

ANCHOR MARINE, INC.

BLANCHE, Justice (dissenting)

I respectfully dissent. The court of appeal opinion notes the following:

(1) The small pleasure boat in which plaintiff was injured was travelling on navigable waters, but was neither for commerce nor for hire.

(2) Plaintiff was a passenger injured by an allegedly defectively designed engine without protective cover.

(3) There was no causation external to the vessel.

(4) There were no rules of the road or donditions of the canal involved.

(5) The accident was no more than a pleasure boat accident where no traditional maritime concern, such as

commerce, navigation or navigational hazards, was involved.

Absent such traditional concerns, the court of appeal found that there was not a sufficient relationship to traditional maritime activities so as to make the claim one in admiralty.

On the other hand, the majority relies solely on the plaintiff's allegation that the vessel was not properly designed and manufactured for safe use on navigable waters to justify its position that plaintiff's claim is "in admiralty".

This sounds like a products liability case arising out of allegedly negligent conduct that occurred long before the vessel involved here wver hit the water.

Being unable to find a so-called "maritime connection", this writer respectfully dissents.

* * *

APPENDIX C.

SUPREME COURT OF LOUISIANA

NEW ORLEANS, 70112

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE # 71

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 22nd day of June, 1981, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson and Harry T. Lemmon, in the cases listed below:

REHEARINGS DENIED:

80-C-2577 Mary McCrine v. Hondo Boats, Inc. BLANCHE, J., would grant a rehearing.

APPENDIX D.

MARY McCRAINE NUMBER 226,882 DIVISION "D"

VERSUS 19TH JUDICIAL DISTRICT

HONDO BOATS, INCORPORATED and ANCHOR MARINE, INC. PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

* *

MOTION FOR APPEAL

On motion of plaintiff, Mary McCraine, appearing herein through undersigned counsel and upon suggesting to the Court that plaintiff desires to appeal devolutively from the Judgment signed on the 5th day of February, 1980.

IT IS ORDERED that devolutive appeal be granted herein with the First Circuit Court of Appeal on the 25th day of April, 1980.

Baton Rouge, Louisiana, this 26th day of February, 1980.

RESPECTFULLY SUBMITTED:

JUDGE

Charles R. Moore
MOORE AND WALTERS
850 North Blvd.
Baton Rouge, LA 70802
(504) 343-8346

APPENDIX E.

MARY McCRAINE

VS.

HONDO BOATS, INCORPORATED AND ANCHOR MARINE, INCORPORATED

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 13, 629

ON APPEAL FROM THE 19TH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HONORABLE MELVIN A. SHORTESS, JUDGE

BEFORE: LOTTINGER, EDWARDS AND PONDER, JJ.

EDWARDS, JUDGE

Plaintiff, Mary McCraine appeals a trail court judgment maintaining defendants' peremptory exception of prescription and dismissing her suit as to all defendants. We affirm.

In her original petition, plaintiff alleged that on May 21, 1978, she was a passenger in a boat manufactured by Hondo Boats, Inc., which had been sold to Anchor Marine, Inc., and subsequently to Robert S. Richardson (who was later made an additional defendant). Plaintiff further alleged that the boat was traveling in the Amite River Diversion Canal, part of the

intercoastal waterway and a navigable waterway of the United States. The gravamen of plaintiff's suit was that as the boat accelerated, it struck the wake from another vessel which caused plaintiff to fall against the xposed engine and receive burns.

On August 2, 1979, suit was filed. Plaintiff sought damages of $480,000 on the ground that the boat as designed was defective and dangerous and stated that the claim made was within the admiralty and maritime jurisdiction of the United States and was filed in state court under authority of the "saving to suitors" clause.[1]

Hondo Boats filed an exception of prescription on the ground that plaintiff's suit had not been brought within the one year period provided by LSA-C.C. Art. 3536. Hondo also urged that the matter was not in admiralty and that therefore Louisiana prescriptive law, rather than the doctrine

of laches, would apply.[2] Anchor Marine and Richardson joined in the exception.

After hearing the exception, the trial court found that the action was not in admiralty and that it had prescribed under state law. Suit was dismissed as to all defendants.

On appeal, the sole issue is whether or not the action is one in admiratly.

The landmark case of Executive Jet Aviation, Inc. v. City of Cleveland, Ohio, 409 U.S. 249, 93 S. Ct. 493, 34 L. Ed. 2d 454 (1972), modified the longstanding rule that "Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance." The Plymouth, 70 U.S. (3 Wall.) 20, 18 L Ed. 125 (1866). Executive Jet held that for a maritime tort to fall within the admiralty jurisdiction, there must be 1) maritime locale and 2) a significant relationship to traditional maritime activity.

Kelly v. Smith, 485 F.2d 520 (5th Cir. 1973), listed factors to consider in deciding whether an activity is traditionally maritime. They include:

1. the functions and roles of the parties;
2. the types of vehicles and instrumentalities involved;
3. the causation and type of injury;
4. traditional concepts of the role of admiralty law.

No precise delineation of admiralty's jurisdictional limits has been formulated. Nor has an exhaustive and all inclusive list of the actions falling within admiralty been compiled. While most of the operational and service concerns of the commercial shipping industry are clearly in admiralty, other areas, such as the products liability case presently at issue, are doubtful. An excellent explanation of why some matters fall into admiralty while others do not is given by Gilmore and Black:

> "Whether a given inclusion within or exclusion from the jurisdiction is warranted must depend on the general sense and policy of having the jurisdiction at all. It is hard to think of any better reason for having this jurisdiction than its aptness for providing a speical-industry court for the maritime industry." The Law of Admiralty, 2d Ed., Sec. 1-10, (1975).

In the present case, the small pleasure craft in which plaintiff was injured was traveling on navigable waters but was neither in commerce nor for hire. Plaintiff was a passenger injured by an allegedly defectively designed engine without a protective cover. There was no causation external to the vessel. Nor were any rules of the road or conditions of the canal involved.

Pleasure boat accidents may be in admiralty when traditional maritime concerns such as commerce, navigation and navigational hazards are involved. Armour v. Gradler, 448 F. Supp. 741 (W.D. Penna. 1978); Kayfetz v. Walker, 404 F. Supp. 75 (Conn. 1975). Absent such traditional

concerns, pleasure boat accidents tend to be excluded from admiralty. Richardson v. Foremost Insurance Company, 470 F. Supp. 699 (M.D. La. 1979); Roberts v. Grammer, 432 F. Supp. 16 (E.D. Tenn. 1977); Crosson v. Vance, 484 F. 2d 840 (4th Cir. 1973)

The trial judge found there was not a sufficient relationship to traditional maritime activities to satisfy the second requirement of Executive Jet. We agree. This case involved nothing more than a products liability claim. That the harm complained of occurred on a pleasure craft is of no moment considering the pertinent facts.

Louisiana procedural law and not the doctrine of laches controls. Because plaintiff filed suit more than one year after her injury, defendants' plea of prescription was properly maintained.

The trial court judgment is affirmed. All costs, both trial and appellate, are to be paid by Mary McCraine.

AFFIRMED.

FOOTNOTES

1. 28 U.S.C.A. 1333 provides in part:

"The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

2. When suit is brought in state court, the general maritime law controls, with exceptions. Moragne v. States Marine Lines, Inc., 398 U.S. 375, 90 S. Ct. 1772, 26 L. Ed. 2d 339 (1970); Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 74 S. Ct. 202, 98 L. Ed. 143 (1953); Garrett v. Moore-McCormack Co., 317 U.S. 239, 63 S. Ct. 246, 87 L. Ed. 239 (1942). The doctrine of laches has consistenly been treated as a substantive right and it therefore controls in maritime suits brought in state courts, state statutes of limitation notwithstanding. Hill v. W. Bruns & Company, 498 F. 2d 565 (2nd Cir. 1974); Oroz v. American President Lines, 259 F. 2d 636 (2nd Cir. 1958); Guidry v. Chevron Oil Company, 366 So. 2d 979 (La. App. 1st Cir. 1978).

APPENDIX F.

MARY McCRAINE NO. 226,882 DIVISION "D"

VERSUS 19TH JUDICIAL DISTRICT

HONDO BOATS, INCORPORATED AND ANCHOR MARINE, INC. PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

* *

JUDGMENT ON EXCEPTION OF PRESCRIPTION

The matter came on for hearing on the exception of lack of jurisdiction and process filed herein by defendant, Hondo Boats, Incorporated and an exception of prescription filed herein by Hondo Boats, Incorporated, and which exception has been adopted by the remaining defendants, Anchor Marine, Inc. and Robert S. Richardson.

After contradictory hearing at which evidence was introduced and argument of counsel was heard;

IT IS ORDERED, ADJUDGED AND DECREED that the exception of lack of insufficiency of citation, insufficiency of service of process and lack of jurisdiction over the

person filed by Hondo Boats, Incorporated is hereby overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the exception of prescription is hereby maintained and plaintiff's suit is dismissed as to all defendants at her costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the third party demand of Anchor Marine, Inc. against Hondo Boats, Inc. is hereby dismissed.

Judgment rendered on the 28th day of December, 1979.

Judgment read and signed the 5th day of February, 1980.

JUDGE

MARY McCRAINE	NO. 226,882 DIVISION D
VERSUS	19TH JUDICIAL DISTRICT
HONDO BOATS, INC., ET AL	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

* *

WRITTEN REASONS FOR JUDGMENT

This case is before the court on an exception of prescription filed by the defendant Hondo Boats. Suit was filed by plaintiff on August 2, 1979, seeking damages for injuries sustained in a boating accident which occurred on May 2, 1978. Under Louisiana law the action brought by the plaintiff ould be prescribed. However, if the suit were properly within Admiralty jurisdiction laches would apply and the suit would be timely. The question before the court is whether this accident is a matter which can be brought as an admiralty action in State court.

The parties have agreed that the boat

involved was a pleasure boat not being used for commercial purposes and that the accident occurred on navigable waters. Pleasure boat accidents have been the subject matter of lawsuits classified as "maritime personal injury" suits. Stansbury v. Hoover, 366 So. 2d 918 (1st Cir. 1978). However, the movement has been away from including these kinds of accidents within Admiralty jurisdiction, Richardson v. Foremost Insurance Co., 470 F. Supp 699 (M.D. La., 1979), based on the current standard for determining Admiralty subject matter jurisdiction. To be within Admiralty jurisdiction, a cause of action must arise on navigable waters and havee some connection to traditional maritime concepts (shipping and/or commercial interests). Pleasure boating accidents generally do not meet the second part of the standard because there is no connection to traditional maritime concepts. Richardson, which excluded

pleasure boats from Admiralty, is in line with the weight of authority. Plaintiff relies on Stansbury to support Admiralty jurisdiction, but the issue of whether Admiralty jurisdiction was properly invoked was not addressed therein.

In this case, plaintiff was a passenger in a pleasure boat and was injured when she came into contact with its engine. The incident does not have sufficient maritime connection to support Admiralty jurisdiction. The action was prescribed at the time suit was filed in State court and the exception of prescription is good.

Accordingly, this suit is dismissed.

BATON ROUGE, LOUISIANA, this 28th day of December, 1979.

JUDGE

CERTIFICATE OF SERVICE

I, Vance R. Andrus, Attorney for Hondo Boats, Incorporated, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the 21st day of September, 1981, I served three copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States on the several parties thereto, as follows:

1. Mary McCraine
2. Anchor Marine, Inc.
3. Robert S. Richardson

by mailing copies in duly addressed envelopes first class postage prepaid, to their respective attorneys of record as follows:

Charles R. Moore, Attorney for Mary McCraine, Moore & Walters, 850 North Boulevard, Baton Rouge, Louisiana 70802

Stephen R. Wilson, Attorney for Anchor Marine, Inc., Keogh & Keogh, 660 Government Street, Post Office Box 3411, Baton Rouge, Louisiana 70802

Ralph Brewer, Attorney for Robert S. Richardson, 200 Government Street, Suite 210, Baton Rouge, Louisiana 70802

It is further certified that all parties required to be served have been served.

Vance R. Andrus

VANCE R. ANDRUS
Attorney for Hondo Boats, Inc.
416 West Main Street
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SUPREME COURT OF THE UNITED STATES

NO._____

HONDO BOATS, INC., ANCHOR MARINE, INC., ROBERT S. RICHARDSON,

Petitioner

MARY McCRAINE

Respondent

The Clerk will enter my appearance as Counsel for Hondo Boats, Incorporated, who IN THIS COURT IS THE PETITIONER.

I certify that I am a member of the Bar of the Supreme Court of the United States:

Vance R. Andrus

(Signature)

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Supplemental Brief

Office - Supreme Court, U.S.
FILED
NOV 30 1981
ALEXANDER L. STEVAS,
CLERK

NO. 81-585

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1981

HONDO BOATS, INC. — Petitioner

VERSUS

MARY McCRAINE
ANCHOR MARINE, INC.
ROBERT S. RICHARDSON — Respondents

**ON WRIT OF CERTIORARI
TO THE SUPREME COURT,
STATE OF LOUISIANA**

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL BRIEF
TO PETITION FOR WRIT OF CERTIORARI

Your petitioner respectfully urges that the Court consider the following development in a separate case currently pending before it, as an additional reason why the court should grant petitioner's request for a Writ of Certiorari in the instant case.

The Court has recently granted a Petition for a Writ of Certiorari in the case of Foremost Insurance Company vs. Richardson, United States Supreme Court Docket No. 80-2134. The United States Fifth Circuit Court of Appeal in Richardson had reversed a lower federal court decision and determined that a claim arising out of a collision between two pleasure boats was within the admiralty jurisdiction. The Fifth Circuit keyed its decision to the fact that there had been a collision on navigable waters as a result of the violation of navigational "Rules of the Road" which govern vessels regardless of size and involvement in commercial activity. In deciding the Richardson appeal, this court will make a final determination as to whether there is admiralty jurisdiction over incidents involving pleasure boats, and can delineate the scope of that jurisdiction and resolve substantial conflict among federal and state courts on the issue.

The lower court in the instant case relied upon the federal district court opinion in Richardson, supra, which had held that there was no admiralty jurisdiction over the facts of the case. The state Court of Appeal also cited the Richardson case in support of its holding that there was no admiralty jurisdiction over the facts of the instant case. The Fifth Circuit reversal of Richardson occurred just prior to oral argument of the instant case before the Louisiana State Supreme Court, and that Court cited the Richardson opinion in the course of its ruling that there was admiralty jurisdiction over the case.

Your petitioner suggests to this court that it should, in the interests of justice and judicial efficiency and economy, grant petitioner's request for a Writ of Certiorari and consolidate this case with Richardson for

simultaneous consideration. All opinions in the instant case rely on the Richardson case, either in negation of, or in support of, admiralty jurisdiction. Both cases involve the same and sole issue, whether accidents involving pleasure boats on navigable waters are within the admiralty jurisdiction of the United States, but the facts of this case involve a claim for products liability and simple negligence arising on and in a pleasure boat.

Should this Court determine that the Fifth Circuit was incorrect in the Richardson case, and that accidents involving pleasure boats, regardless of the circumstances, are not within the admiralty jurisdiction, this determination would be applicable to the facts of petitioner's case and would require reversal of the state Supreme Court decision. The two cases should be considered together even if this Court determines that the fact that a vessel collision and a violation of navigational "Rules of the Road" were involved in Richardson is sufficient to justify a finding of admiralty jurisdiction, although pleasure boats, rather than commercial vessels, were involved. The Court would then have an opportunity to define and limit the proper scope of admiralty jurisdiction in pleasure boat accidents. Since the facts of petitioner's case show that plaintiff's claim arose solely out of an alleged accident on a pleasure craft, and there was no other connection with traditional maritime concerns such as commerce, navigation and navigational hazards to justify the invocation of admiralty jurisdiction, the Court could set out a fair and logical test that would exclude from admiralty jurisdiction cases arising from pleasure boat accidents where no traditional maritime concerns are involved.

Respectfully submitted,

BY: Vance R. Andrus

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CERTIFICATE OF SERVICE

I Vance R. Andrus, Attorney for Hondo Boats, Incorporated, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the date of mailing of this brief, I served three copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States on the several parties thereto, as follows:

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It is further certified that all parties required to be served have been served

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Opposition

Office - Supreme Court, U.S.
FILED
DEC 10 1981
ALEXANDER L. STEVAS
CLERK

No. 81-585

IN THE

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OCTOBER TERM, 1981

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Respondents.

ON WRIT OF CERTIORARI
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ROBERT S. RICHARDSON

Respondents.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT
STATE OF LOUISIANA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRIEF BY RESPONDENT, MARY McCRAINE, IN OPPOSITION TO PETITION FOR CERTIORARI

MAY IT PLEASE THE COURT:

The respondent, Mary McCraine, plaintiff/appellant below, respectfully urges that the application for writ of certiorari to review the judgment of the Supreme Court, State of Louisiana, entered on May 18, 1981, filed herein on behalf of Hondo Boats, Inc., be denied.

STATEMENT OF THE CASE

Respondent generally adopts the statement of the case set forth in petitioner's application, particularly insofar as it sets forth the facts pleaded and the actions of the lower courts.

In addition, certain facts were stipulated at the trial court level. The most important of these are:

A. The accident occurred on the Diversion Canal between Lake Maurepas and the Amite River;

B. This waterway is used in commercial navigation by tugs and barges and constitutes part of the Intercoastal system;

C. The vessel in which plaintiff was riding was a "pleasure" boat;

D. At the time of the accident, the boat was not being used for commercial purposes;

E. The plaintiff was a passenger in the boat, sitting on a seat facing the rear. As the boat accelerated from a stop position, it struck the wake of another boat pulling a skier, causing plaintiff to be thrown back-

ward and sliding under the exposed motor of the boat, causing serious burns.

It is set forth by petitioner that "plaintiff does not allege that her injuries were caused by any violation of maritime navigation rules or by the negligence of the driver of the pleasure boat and the actual manner of operation of that boat". Technically, that is a true statement. Mary McCraine pleaded only the facts of the accident. Whether the operator of the vessel was negligent in any manner or violated any rules of navigation subjecting him to liability is a conclusory matter to be determined by the trier of fact and is not required to be pleaded. Further, it is certainly to be anticipated that the negligence in operation of the vessel on the part of its pilot is an issue which will be raised in the defense of the manufacturer.

Plaintiff/respondent, Mary McCraine, asserts that she has the right to file her suit in state court under the "Savings to Suitors" clause and to have the maritime doctrine of laches apply to her suit. The Louisiana State Supreme Court adopted respondent's position and ruled that the state law establishing a time limitation within which plaintiff must file a lawsuit was not applicable to this suit and that the suit should not have been dismissed on that basis. The issue then is not only whether Federal maritime law should apply to claims in which pleasure boats are involved but also whether the Louisiana State Supreme Court decision should be left undisturbed for the reason that it promotes uniformity of law.

REASONS FOR DENYING THE WRIT

Initially, the conclusion by the Louisiana State Supreme Court that the potential dangers to navigation and commerce posed by improperly designed and manufactured vessels and by the manner in which they are operated requires the appli-

cation of admiralty or maritime concepts, and is well supported by existing jurisprudence on the Federal level. These principles being well established, there is no necessity for the granting of petitioner's writ of certiorari.

Alternatively, the writ should be denied as it presents no proper question for the review of this Court. The decision rendered by the Louisiana State Supreme Court represents no expansion of the jurisdiction of Federal courts. In its present state, that decision is only one promoting uniformity of law.

I.

THE LOUISIANA STATE SUPREME COURT'S DECISION IS CORRECT AND SUPPORTED BY EXISTING JURISPRUDENCE.

No reason exists for the granting of a writ of certiorari to review the decision of the Louisiana State Supreme Court inasmuch as that court followed the weight of Federal jurisprudential authority and relied heavily on it in reaching its decision.

The Louisiana State Supreme Court recognized that, since *Executive Jet Aviation, Inc. vs. City of Cleveland, Ohio,* 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed 2d 454 (1972), maritime locality alone is no longer sufficient to sustain admiralty jurisdiction. That Honorable Court citing such cases as *Chapman vs. City of Grosse Pointe Farms,* 385 F.2d 962 (6 Cir. 1967); *Peytavin vs. Government Employees Insurance Company,* 453 F.2d 1121 (5 Cir. 1972); and *Kelly vs. Smith,* 485 F.2d 520 (5 Cir. 1973), *cert. den.* 416 U.S. 969 (1974) recognized that there must, in addition, be a significant relationship to maritime activity and interest in order for the law of admiralty to apply where Federal jurisdiction is to be extended. Petitioner's view is that this application of Federal admiralty concepts

should be restricted to those cases involving the shipping industry. This is clearly contrary to the existing jurisprudence.

The extension of Admiralty Jurisdiction Act, 46 U.S.C. 740 provides in part that:

> "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land".

1 U.S.C. 3 defines vessel as follows:

> "The word 'vessel' includes every description of water or other artificial contrivance used, or capable of being used, as a means of transportation on water."

In *St. Hilaire Moye vs. Henderson*, 496 F.2d 973 (8 Cir. 1974), a case remarkably similar to the one before this Honorable Court, the Court of Appeal opined that the definitions above were sufficiently broad to encompass pleasure boast. The court went on to hold that the operation of a boat on navigable waters, no matter what its size or activity, is a traditional maritime activity to which the concepts of admiralty extend.

The Eighth Circuit is supported by decisions in other Federal circuit and district courts — *Oppen vs. Aetna Insurance Company*, 485 F.2d 252 (9 Cir. 1973) (admiralty jurisdiction sustained in suit brought by owners of private pleasure boats damaged from an oil spill in the Santa Barbara Channel); *Lunar vs. Star of India*, 356 F.Supp. 59 (S.D. Cal. 1973) (the involvement of a vessel was considered alone sufficient to invoke admiralty jurisdiction); *Levinson vs. Deupree*, 345 U.S. 648, 73 S.Ct. 914, 97 L.Ed 1319 (the use of a

water born vessel on navigable water in order to present a case falling within the historical scope and design of the law of admiralty) ; *Coryell vs. Phipps*, 317 U.S. 406, 63 S.Ct. 291, 87 L.Ed 363 (1943).

In *Kayfetz vs. Walker*, 404 F.Supp. 75 (D.C. Conn. 1975), the district court was confronted with a case involving the collision of two sailing yachts during a race. tI was argued there that, inasmuch as the commercial connection, insisted upon by petitioner herein, was missing, the rules of admiralty should not apply. The court specifically found that the scope of the injuries were those of which admiralty and maritime law traditionally had taken cognizance.

In *Gilmore vs. Witschorek*, 411 F.Supp. 491 (E.D. Ill. 1976), Federal admiralty jurisdiction was said to encompass a collision between two pleasure boats on a navigable waterway, resulting in a wrongful death claim. More directly to the point is *Schuster vs. Baltimore Boat Sales, Inc.*, 471 F. Supp. 321 (D.C. Md. 1979) (citing *Richards vs. Blake Builders Supply, Inc.*, 528 F.2d 745 (C.A. 5-1975)). The district court there simply stated that admiralty jurisdiction is present with respect to tort claims involving pleasure craft.

Even with the interpretation urged by petitioner, this matter has still been properly decided by the Louisiana State Supreme Court. There is involved here not only a claim with regard to the navigation and operation of a vessel on navigable commercial waterway but also a claim arising out of a commercial maritime activity. A major allegation in this suit is that the vessel in question was inadequately designed and built by the manufacturer and that the retailer, specializing in the sale of water craft, knew of the defective nature of the vessel and its danger in normal use. Certainly there is no commercial endeavor more crucial to maritime activity or navigation than the design and construction of vessels. With-

out the latter, the former would not exist. The proper design and construction of vessels is commercial in nature and connected to all maritime activity.

The recognition of claims arising out of improper design and manufacture is a more modern application of the role of admiralty. However, it is one that is now well established. In the case of *Jig The Third Corporation vs. Puritan Marine Insurance Underwriters Corporation*, 519 F.2d 171 (C.A. 5-1975), the purchaser of a shrimp boat brought an action against the shipbuilder/seller for the loss of the shrimp boat which sank in navigable waters. Defendants argued that their alleged misconduct did not constitute a maritime tort. However, the court held that, even though the allegedly tortious act or omission, i.e., improper design and manufacture may have occurred ashore, where it caused injury in navigable water, the interest of admiralty overbalanced any interest which any state might have. Further authority for this position is found in *Schaeffer vs. Michigan-Ohio Navigation Company*, 416 F.2d 217 (6 Cir. 1969); *In Re. Alamo Chemical Transportation Company*, 320 F.Supp. 631 (S.D. Tex. 1970); *Todd Shipyards Corporation vs. Turbin Service, Inc.*, 467 F.Supp. 1257 (E.D. La. 1978).

As the Louisiana State Supreme Court recognized in its opinion, whether a vessel was or was not properly designed and manufactured for safe use upon navigable waters has a substantial connection with traditional maritime activity.

Some of the cases cited by petitioner are easily distinguished and rendered inapplicable. For example, *Roberts vs. Grammer*, 532 F.Supp. 16 (E.D. Tenn. 1977) involved a collision on a small landlocked lake. Clearly this is a matter of only local or state concern. The matter before this Court involves a vessel in navigation on a commercially active navigable waterway.

Petitioner further asserts that perhaps the nature of the injury sustained by the plaintiff should be determinative of the issue of whether admiralty concepts should apply. Citing *Armour vs. Gradler*, 448 F.Supp. 741 (W.D. Pa. 1978), petitioner suggests that perhaps the sinking of a boat as a result of some defect in the hull, causing one of its occupants to drown is a traditional maritime activity. The case before this Honorable Court involves a defect in the engine of the vessel rather than its hull and the plaintiff was only burned rather than drowned. Such questionable distinctions as are drawn by petitioner should not make this case any less cognizable in admiralty merely because the defect was in the engine rather than the hull and Mary McCraine was merely burned rather than drowned.

Petitioner concedes that there is justification for a determination that admiralty jurisdiction existed in the case of *Kayfetz vs. Walker, supra,* and *Gilmore vs. Witschorek, supra* Both of these involve collisions between two pleasure boats and petitioner concedes that a violation of navigational rules is a matter to be considered under the law of admiralty. The violation of these navigable rules is very much at issue in the case presented to this Honorable Court as has been discussed above.

There is an attempt by petitioner to align this case with *Montgomery vs. Harold*, 473 F.Supp. 61 (E.D. Mich. 1979). While it is true that Mary McCraine was a social friend of the operator of the vessel, there is no indication that she played no role in the navigation of the vessel, though, at the time she was injured, she was not actively doing anything in furtherance of the navigation of the vessel. The sole cause of Mary McCraine's injury was other than an instrumentality not peculiar to traditional maritime activity. In this case there is presented an injury caused by an engine specifically designed and implaced in a navigational vessel which, com-

bined with the manner in which the vessel was operated, caused the injury. Both of these are peculiar to traditional maritime activity.

II.

THE DECISION OF THE LOUISIANA STATE SUPREME COURT PROMOTES UNIFORM STANDARDS FOR THE MANUFACTURE, DESIGN AND OPERATION OF VESSELS IN COMMERCIALLY NAVIGABLE WATERWAYS.

None of the cases cited by petitioner compel the conclusion that admiralty jurisdiction should be limited only to litigation involving commercial activity on navigable waters. While it may be true that originally admiralty law arose out of problems incurred in the shipping industry, it should be noted that, at the time this body of law was evolving, there was little, if any, pleasure boating activity. However, in these modern times, ownership of a navigable vessel is within reach of the majority of the population and waterways both commercial and recreational are plied at least as heavily by pleasure vessels as by commercial vessels. The mere existence of these numbers of pleasure boats present a significant hazard to navigation both commercial and non-commercial and all should be governed by the same body of law. As the Fifth Circuit noted in *Kelly vs. Smith*, 45 F.2d 520, at 526 (5 Cir. 1973):

> "Admiralty has traditionally been concerned with furnishing remedies for those injured while traveling navigable waters."

That circuit also recognized in its decision in *Richardson vs. Foremost Insurance Company*, 641 F.2d 314 (5 Cir. 1981) that to withhold admiralty jurisdiction would be to create uncertainty that would plague both litigants and courts. That learned body pointed out the differing obligations and duties that might arise in the case of non-commercial navigators

traveling on navigable waters shared by more than one state, and the different standards of navigation which might be applicable where, in retrospect, their activity turned out to be commercial as opposed to non-commercial. Only a uniform admiralty law, it was pointed out, avoids such problems. The alleviation of such uncertainties and the promotion of uniformity is accomplished by the decision of the Louisiana State Supreme Court which applies the same law to all vessels on navigable waterways whether they be involved in shipping or not.

The claims asserted by Mary McCraine and those expected to be at issue in this lawsuit have different bases for each person or entity involved. Of course, any claims or assertions with regard to the operator of the vessel would be relative to his failure to adhere to appropriate navigational standards. Against Hondo, the claim is that, as manufacturer, that defendant designed, manufactured and sold a vessel which was defective with full knowledge that the vessel would be introduced into navigable commercial waterways, even perhaps for commercial purposes.

Even though Anchor Marine did not manufacture the boat, their knowledge of the vessel's intended or reasonably expected uses and of its defective design and manufacture would provide a basis for their liability. Richardson, both as owner and as a possible modifier of the vessel, would have basically the same liability as Anchor Marine or Hondo.

Clearly, any designer, manufacturer, vendor or provider of a vessel can reasonably expect that such vessel will be in navigation on commercial waterways, which waterways may either be wholly within a state, bordering more than one state or be of a coastal nature. The inability of these parties to anticipate the duties to which they will be held and the legal concepts which will apply to them not only adds to the confusion which the Fifth Circuit sought to avoid in *Richardson*

but also acts to impede a commercial activity maritime in nature. The Louisiana State Supreme Court, after a thorough analysis of the problems presented, determined that the Federal law of admiralty should apply to this case and others of its kind, thus promoting uniformity and making readily ascertainable to all future litigants the duties and liabilities to which they will be subjected.

CONCLUSION

The granting of a writ of certiorari of the matter before this Honorable Court is completely unnecessary. The decision of the Louisiana State Supreme Court applying the admiralty concept of laches to this case neither departs from existing Federal jurisprudence nor expands Federal jurisdiction. Rather, that well reasoned decision merely makes uniform the law governing vessels navigating on commercial waterways within and about the State of Louisiana.

It is respectfully submitted that petitioner's application for writ of certiorari should be denied.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Charles A. O'Brien III, Attorney for Mary McCraine, defendant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the date of mailing of this brief, I served three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the United States on the several parties thereto, as follows:

1. Hondo Boats, Inc.
2. Anchor Marine, Inc.
3. Robert S. Richardson

by mailing copies in duly addressed envelopes first class postage prepaid, to their respective attorneys of record as follows:

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It is further certified that all parties required to be served have been served, on December 8, 1981.

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